

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SANDRA JUNE GREEN,

Defendant-Appellant.

UNPUBLISHED

December 11, 2001

No. 225191

Lapeer Circuit Court

LC No. 98-006458-FH

Before: K.F. Kelly, P.J., and Hood and Doctoroff, JJ.

MEMORANDUM.

Defendant was convicted, following a jury trial, of one count of willfully and maliciously killing an animal, MCL 750.50b, and five counts of animal cruelty (failure to provide adequate care), MCL 750.50.¹ Defendant appeals as of right, and we affirm.

Defendant first argues that the trial court erred by failing to provide a supplemental instruction for malicious at the jury's request. While defendant alleges, on appeal, that the instruction for malicious destruction of personal property should have been given, CJI 32.2, the use note accompanying this instruction indicates that it does not apply to acts involving the killing, maiming, disfiguring, or poisoning of animals.² In any event, following review of the instructions as a whole, *People v Caulley*, 197 Mich App 177, 184; 494 NW2d 853 (1992), we cannot conclude that error requiring reversal occurred.

¹ Additionally, defendant pleaded guilty to ten counts of burial of dead animals, MCL 750.57. Defendant was sentenced to concurrent terms of one year imprisonment for the willfully and maliciously killing an animal conviction, ninety days for the animal cruelty convictions, and sixty days for the burial of dead animals convictions.

² There is no indication that defendant objected to the trial court's instruction that the jury rely on the common meaning of the term. Defendant indicates that the parties were not apprised of the jury's request at the appropriate time. However, when the trial court could not recall the specifics of a note requesting transcriptions of testimony of witnesses, it inquired whether the parties could recall the name of the witnesses. This indicates that the parties were apprised of the notes earlier, but the content of the notes were not placed on the record until the verdict was rendered.

Defendant next argues that the trial court erred by failing to grant her motion to suppress the evidence for failing to obtain a search warrant. We disagree. The plain view and exigent circumstances exceptions to the warrant requirement were applicable. See *People v Jordan*, 187 Mich App 582, 587; 468 NW2d 294 (1991). Review of the record reveals that the severely underweight dog was observable from defendant's driveway. The lack of consumable food and water available to the dog coupled with the hot weather conditions raised concerns about animals contained within the steel barn that did not have proper ventilation.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Harold Hood

/s/ Martin M. Doctoroff